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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/719,639

11/21/2003

Michael J. Faulks

18,098

3447

23556 7590 05/12/2009  
KIMBERLY-CLARK WORLDWIDE, INC.  
Catherine E. Wolf  
401 NORTH LAKE STREET  
NEENAH, WI 54956

EXAMINER

HAND, MELANIE JO

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

05/12/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/719,639	FAULKS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	MELANIE J. HAND	3761	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 19 February 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 10-18, 21-30 and 32-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 10-18, 21-30, 32-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION**

1. In view of the appeal brief filed on February 19, 2009, PROSECUTION IS HEREBY REOPENED. New grounds of rejection are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Tatyana Zalukaeva/

Supervisory Patent Examiner, Art Unit 3761

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 10-13, 15-18, 21-25, 27-30 and 32-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al (EP 661,960 B1).

With respect to **claim 10**: Miller discloses a reduced-noise sheet comprising the following: a substrate layer 9 of frontal tape 4, which defines a first surface having a surface area and a target region for engagement by fastener tapes 6; and a noise-reducing layer in the form of a layer 8 of release agent solution which substantially completely coats said target region, said noise-reducing layer 8 having a basis weight of 0.1-1.0 gsm, which does not overlap the claimed range of at least about three grams per square meter. However applicant has not established any criticality for the claimed range. Since Miller also discloses that the release agent is responsible for establishing a sufficient peel strength between the fastener tapes 6 and frontal tape 4 without ripping the tape, while also reducing noise, the basis weight of the release agent/noise-reducing layer is a result effective variable. It would be obvious to one of ordinary skill in the art to modify the article of Miller such that the basis weight of the noise-reducing layer falls within the claimed range with a reasonable expectation of success to establish optimal peel strength between the fastener tape and frontal tape while reducing noise level while detaching the tapes. It has been held that the discovery of an optimum value of a result-effective variable

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in a known process is ordinarily within the skill of the art. See *In re Boesch and Slaney*, 205

USPQ 215 (C.C.P.A. 1980)

Miller discloses that a backsheet has the frontal tape disposed thereon with the noise-reducing layer but does not disclose a noise-reducing backsheet. However since the substrate material of the frontal tape is identical to the backsheet, the noise reducing layer could also be coated thereon instead of coating on a frontal tape substrate. It would be obvious to one of ordinary skill in the art to do so, since the release agent both allows some adhesion to the backsheet which would allow attachment of the fastening tapes during wear while still allowing detachment and providing the reduction in noise level upon detachment.

With respect to **claim 11**: The target region disclosed by Miller is at least about 75% of said surface area of said first surface inasmuch as Miller discloses that the one side of the frontal tape is coated with the release agent, which examiner interprets to mean about 100% of the target region, also in light of the release agent's disclosed intended purpose which is to engage the fastening tapes which can be attached anywhere on the frontal tape.

With respect to **claim 12**: Miller discloses that said noise-reducing layer 8 has a basis weight of 0.1-1.0 gsm, which does not overlap the claimed range of at least about four grams per square meter. However applicant has not established any criticality for the claimed range. Since Miller also discloses that the release agent is responsible for establishing a sufficient peel strength between the fastener tapes 6 and frontal tape 4 without ripping the tape, while also reducing noise, the basis weight of the release agent/noise-reducing layer is a result effective variable. It would be obvious to one of ordinary skill in the art to modify the article of Miller such that the basis weight of the noise-reducing layer falls within the claimed range with a reasonable

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expectation of success to establish optimal peel strength between the fastener tape and frontal tape while reducing noise level while detaching the tapes. It has been held that the discovery of an optimum value of a result-effective variable in a known process is ordinarily within the skill of the art. See *In re Boesch and Staney*, 205 USPQ 215 (C.C.P.A. 1980)

With respect to **claim 13**: The noise-reducing layer 8 disclosed by Miller consists essentially of a urethane, i.e. it consists essentially of polyurethanes. (Page 3, lines 38-40)

With respect to **claim 15**: The substrate layer 9 comprises an oriented polypropylene film (hereafter "OPP"), which is a thermoplastic, polymeric film. (Page 3, lines 33-35)

With respect to **claim 16**: The substrate layer is non-elastomeric inasmuch as it is made of OPP, which is not an elastomeric material.

With respect to **claim 17**: The reduced-noise backsheet further comprises a nonwoven layer, backsheet 2 adhered to said substrate layer 9.

With respect to **claim 18**: The substrate layer 9 comprises polypropylene, specifically OPP. (Page 3, lines 33-35)

With respect to **claim 21**: Miller discloses a disposable absorbent article comprising the following: a body-side liner, i.e. water-permeable interior sheet 3; a garment-side outer cover, i.e. backsheet 2, and an absorbent assembly/batt disposed between said body-side liner and said garment-side outer cover.

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said outer cover comprising: a liquid-impermeable substrate layer 9 of frontal tape 4 comprised of a thermoplastic, polymeric material (OPP) and which defines a first surface having a surface area and a target area; and a noise-reducing layer in the form of a layer 8 of release agent which substantially completely coats said target region, said noise-reducing layer having a basis weight of 0.1 – 1.0 gsm, which does not overlap the claimed range of at least about three grams per square meter. However applicant has not established any criticality for the claimed range. Since Miller also discloses that the release agent is responsible for establishing a sufficient peel strength between the fastener tapes 6 and frontal tape 4 without ripping the tape, while also reducing noise, the basis weight of the release agent/noise-reducing layer is a result effective variable. It would be obvious to one of ordinary skill in the art to modify the article of Miller such that the basis weight of the noise-reducing layer falls within the claimed range with a reasonable expectation of success to establish optimal peel strength between the fastener tape and frontal tape while reducing noise level while detaching the tapes. It has been held that the discovery of an optimum value of a result-effective variable in a known process is ordinarily within the skill of the art. See *In re Boesch and Slaney*, 205 USPQ 215 (C.C.P.A. 1980)

With respect to **claim 22**: The target region disclosed by Miller is at least about 50% of said surface area of said first surface inasmuch as Miller discloses that the one side of the frontal tape is coated with the release agent, which examiner interprets to mean about 100% of the target region, also in light of the release agent's disclosed intended purpose which is to engage the fastening tapes which can be attached anywhere on the frontal tape.

With respect to **claim 23**: The target region disclosed by Miller is at least about 75% of said surface area of said first surface inasmuch as Miller discloses that the one side of the frontal

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tape is coated with the release agent, which examiner interprets to mean about 100% of the target region, also in light of the release agent's disclosed intended purpose which is to engage the fastening tapes which can be attached anywhere on the frontal tape.

With respect to **claim 24**: Miller discloses that said noise-reducing layer 8 has a basis weight of 0.1-1.0 gsm, which does not overlap the claimed range of at least about four grams per square meter. However applicant has not established any criticality for the claimed range. Since Miller also discloses that the release agent is responsible for establishing a sufficient peel strength between the fastener tapes 6 and frontal tape 4 without ripping the tape, while also reducing noise, the basis weight of the release agent/noise-reducing layer is a result effective variable. It would be obvious to one of ordinary skill in the art to modify the article of Miller such that the basis weight of the noise-reducing layer falls within the claimed range with a reasonable expectation of success to establish optimal peel strength between the fastener tape and frontal tape while reducing noise level while detaching the tapes. It has been held that the discovery of an optimum value of a result-effective variable in a known process is ordinarily within the skill of the art. See *In re Boesch and Slaney*, 205 USPQ 215 (C.C.P.A. 1980)

With respect to **claim 25**: The noise-reducing layer 8 disclosed by Miller consists essentially of a urethane, i.e. it consists essentially of polyurethanes. (Page 3, lines 38-40)

claim 26: The noise-reducing layer 8 consists essentially of at least one of styrene block copolymers and olefin-based adhesives.



With respect to **claim 27**: The substrate layer 9 comprises an oriented polypropylene film (hereafter "OPP"), which is a thermoplastic, polymeric film. (Page 3, lines 33-35)

With respect to **claim 28**: The substrate layer is non-elastomeric inasmuch as it is made of OPP, which is not an elastomeric material.

With respect to **claim 29**: The reduced-noise backsheet further comprises a nonwoven layer, backsheet 2 adhered to said substrate layer 9.

With respect to **claim 30**: The substrate layer 9 comprises polypropylene, specifically OPP. (Page 3, lines 33-35)

With respect to **claim 32**: It is noted that both in the instant application and the prior art of Miller the noise level of the article appears to be entirely ascribed to those components disclosed as responsible for the noise levels disclosed. Thus, where the noise level of the components or the article are mentioned, they are synonymous with one another. Miller discloses a disposable absorbent article comprising the following: a body-side liner, i.e. water-permeable interior sheet 3; a garment-side outer cover, i.e. backsheet 2, and an absorbent assembly/batt disposed between said body-side liner and said garment-side outer cover. The outer cover comprises the following: a liquid-impermeable substrate layer 9 of frontal tape 4 comprised of a thermoplastic, polymeric material (OPP) and which defines a first surface having a surface area and a target area; and a noise-reducing layer in the form of a layer 8 of release agent which substantially completely coats said target region. The article has a noise level of 53.3-66.3 dB, which does not overlap the claimed range of a Noise Level of less than 30.0 dB at 2 kHz and less than 28.0

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dB at 4 kHz. However, applicant has not established sufficient criticality for these limitations regarding noise level. Further, the noise level is determined by the materials used and the amount of noise reducing material present. The amount of noise reducing material was previously determined to be a result effective variable as disclosed by Miller for reasons stated *supra*, and Miller meets the claim limitations as to a substrate that is a thermoplastic polymeric film and a noise-reducing layer that consists essentially of polyurethanes. Thus while Miller does not explicitly disclose a noise level within the claimed range, it would be obvious to one of ordinary skill in the art to modify the article of Miller so as to have noise levels within the claimed range.

With respect to **claim 33**: The target region disclosed by Miller is at least about 50% of said surface area of said first surface inasmuch as Miller discloses that the one side of the frontal tape is coated with the release agent, which examiner interprets to mean about 100% of the target region, also in light of the release agent's disclosed intended purpose which is to engage the fastening tapes which can be attached anywhere on the frontal tape.

Miller discloses that the noise-reducing layer having a basis weight of 0.1 – 1.0 gsm, which does not overlap the claimed range of at least about three grams per square meter. However applicant has not established any criticality for the claimed range. Since Miller also discloses that the release agent is responsible for establishing a sufficient peel strength between the fastener tapes 6 and frontal tape 4 without ripping the tape, while also reducing noise, the basis weight of the release agent/noise-reducing layer is a result effective variable. It would be obvious to one of ordinary skill in the art to modify the article of Miller such that the basis weight of the noise-reducing layer falls within the claimed range with a reasonable expectation of success to establish optimal peel strength between the fastener tape and frontal

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tape while reducing noise level while detaching the tapes. It has been held that the discovery of an optimum value of a result-effective variable in a known process is ordinarily within the skill of the art. See *In re Boesch and Slaney*, 205 USPQ 215 (C.C.P.A. 1980)

With respect to **claim 34**: The noise-reducing layer 8 disclosed by Miller consists essentially of a urethane, i.e. it consists essentially of polyurethanes. (Page 3, lines 38-40)

With respect to **claim 35**: The substrate layer 2 comprises a thermoplastic, non-elastomeric material inasmuch as it is made of polypropylene, a thermoplastic material which is not an elastomeric material.

With respect to **claim 36**: The article of Miller further comprises a nonwoven, layer, frontal tape layer 9 made of OPP film, adhered to said substrate layer 2.

5. Claims 14 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Miller et al ('960) in view of Wieber et al (U.S. Patent Application Publication No. 2004/0075299).

With respect to **claims 14,26**: Miller does not disclose that the noise-reducing layer 8 consists essentially of at least one of styrene block co-polymers and olefin-based adhesives. Wieber discloses a noise-reducing laminate wherein the noise reducing material layer is made of olefinic polymer adhesive. Since the article of Wieber seeks to solve a similar problem in the art to that with which applicant is concerned, and accomplishes the identical goal of noise dampening disclosed by Miller, it would be obvious to one of ordinary skill in the art to modify the article of Miller such that the noise reducing layer instead consists essentially of olefinic

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polymer adhesive as disclosed by Wieber with a reasonable expectation of success to maintain the benefit of noise reduction in the article.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MELANIE J. HAND whose telephone number is (571)272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Melanie J Hand/  
Examiner, Art Unit 3761